Supreme Court, U.S.
FILED

NO. 93-2051 JUN 13 1994

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1994

JAMES R. ANDERSON,
Plaintiff-Appellant

v.

UNITED STATES OF AMERICA,
INTERNAL REVENUE SERVICE;
TIMOTHY R. FARKAS,

Defendant-Appellees

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI BRIEF FOR PETITIONER

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QUESTIONS PRESENTED FOR REVIEW

1) Did the District Court properly apply Rule 12 (b) of the *Federal Rules of Civil Procedure* as it is related to Rule 56 in awarding summary judgement to the Defendants?

2) Whether all parties must execute all government documents as mandated by statutes.

LIST OF PARTIES TO TUE PROCEEDINGS IN THE COURT BELOW

The caption of the case in the court contains the names of all parties to the proceedings in the United States Court of Appeals for the Sixth Circuit and for the United States District Court for the Southern District of Ohio.

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OPINIONS BELOW

The March 11, 1994, opinion of the Court of Appeals, for the Sixth Circuit, filed on March 11, 1994, whose judgment is herein sought to be reviewed, is unpublished, and is attached in Appendix A. The prior opinions of the United States District Court for the Southern District of Ohio are attached in Appendix B.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on March 11, 1994. The jurisdiction of this Court is invoked pursuant to 28 USC § 1254 (1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED

This case involves the petitioner's right to due process in the Federal Courts, such access being denied by improperly invoking the Federal Rules of Civil Procedure Rule 12 (b) (6), in a manner contrary to the mandate of the Court of Appeals of various circuits. Rule 12 (b) (6) provides in pertinent part;

> If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as

provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

This action under the apparent authority of Rule 12 (b) (6) denied the petitioner his right to due process of law under the United States Constitution Amendment V, which reads in pertinent part:

nor be deprived of life, liberty, or property, without due process of law:

STATEMENT OF THE CASE

On July 3, 1991, petitioner, James R. Anderson, filed an action in the United States District Court for the Southern District of Ohio against the Internal Revenue Service for the purpose of releasing liens filed against the petitioner dated September 22, 19•6, May 14, 1987, August 21, 1989 and October 13, 1989. The petitioner was denied his right to litigate this matter by the District court of the Southern District of Ohio, by refusing to address the issues through an improper application of Rule 12 (b) (6).

The District Court for the Southern District of Ohio, dismissed the action on April 28, 1992, claiming Federal Rules of Civil Procedure (F.R.C.P.) Rule 12 (b) (6). On October 20, 1993, petitioner filed an appeal with the United States Court of Appeals, Sixth Circuit. Neither the District or Appeals Court or the Appeals Court addressed the key issues stated in the complaint. The complaint pointed out the defects in the defendants' procedure in the administration of the tax laws. These defects included misrepresenting the clear wording of the statutes. The petitioner's complaint requested return of property taken as a result of wrongful procedure. This issue was not addressed or ruled on. The issues in the case were repeated to the Court of Appeals. Similarly, the appeals court did

not recognize or address any of the issues. The Constitutional issue of lack of due process, did not arise until it was apparent that petitioner was DENIED permission to litigate this matter. On March 11, 1994, the Court of Appeals, upheld the decision of the District Court. Petitioner files this petition pursuant to the *Rules of the Supreme Court* Rule 13.4.

REASONS FOR GRANTING THE WRIT

The judgment of the *United States Court Of Appeals For The Sixth Circuit* should be reviewed by this Court for the reasons set forth below:

1.

There are a wealth of cases relating to F.R.C.P. Rule 12 (b) (6) contrary to the Appeals Court's treatment of the case at bar. All circuits appear to agree that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. The various circuits further agree that the factual averments of a complaint are to be accepted as true, and construed favorably to the plaintiff-appellant. Exceptions have been limited, but only to far-fetched unsubstantiated theory as appropriately stated in the following case:

> Despite the highly deferential reading which we accord a litigant's complaint under Rule 12(b)(6), **we need not credit bald assertions, periphrastic circumlocutions, unsubstantiated conclusions, or outright vituperation.** *See Chongris v. Board of Appeals*, 811 F.2d 36, 37 (1st Cir. *cert. denied*, 483 U.S. 1021, 107 S.Ct. 3266, 97 L.Ed.2d 765 (1987). Moreover, the rule does not entitle a plaintiff to rest on "subjective characterizations" of conclusory descriptions of a "a general scenario which could be dominated by unpleaded facts." *Correa-Martinez v. Arrillaga-Belendez*, 903 F.2d 49, (1st Cir. 1990)_ (emphasis added)

In *Chongris v Board of Appeals of Town of Andover,* the court again confirmed and

referred to these severely limited exceptions in its defense of such dismissals by stating:

> We exempt, of course, those "facts" which have since been conclusively contradicted by plaintiffs' concessions or otherwise, and likewise eschew any reliance on **bald assertions, unsupportable conclusions, and "opprobrious epithets."** *See Snowden v. Hughes,* 321 U.S. 1, 10, 64 S.Ct. 397, 402, 88 L.Ed. 497 (1944) *Chongris v. Board Or Appeals of Town of Andover!* 811 F.2d 36 (1st Cir. 1987)_(emphasis added)

Petitioner has not made any concessions and the issues before the Court have been and continue to be the enforcement of certain statutory provisions. Petitioner has refrained from making any conclusions that could be considered either supportable or unsupportable and assertions have been limited to an explanation of the facts. The petitioner's complaint as filed in this action is in no way characterized by the conditions stated in *Correa-Martinez and Chongris, supra.*

2.

The petitioner's complaint did not set forth conclusions. Rather, petitioner's complaint set forth facts established as a result of certified mailings which included requests for relief prior to court action. Petitioner's complaint also contained exhibits that included certified letters to the defendants requesting information—not bald assertions or unsubstantiated conclusions.

3.

None of the issues stated in the Complaint could be categorized as, *"bald assertions, periphrastic, circumlocutions, unsubstantiated conclusions, outright vituperation, " "unsupportable conclusions, or opprobrious epithets, "* which would trigger the power of Rule 12 (b) (6) to cause

a dismissal for failure to state a cause of action. Moreover, the petitioner's complaint referred to clearly written statutes and factual evidence which were made an issue in the proceeding—evidence that the court did not consider, but nevertheless was obligated to consider, before summarily ruling on the matter.

4.

The courts ruling on the adequacy of a complaint must not be prejudiced by various presumptions as demonstrated by *Scheuer v. Rhodes*, 416 US 232:

> When a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, the issue is not whether a plaintiff will ultimately prevail **but whether the claimant is entitled to offer evidence** to support the claims; this is so even though it may appear on the face of the pleadings **that a recovery is very remote and unlikely,** but that is not the test.
>
> We intimate no evaluation whatever as to the merits of the petitioners' claims or as to whether it will be possible to support them by proof. **We hold only that,** on the allegations of their respective complaints, **they were entitled to have them judicially resolved.** (emphasis added)

The quintessential element of any determination **pertaining** to such adequacy was

identified by the federal court in Warth v. *Seldin,* when it stated:

> In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a "case or controversy" between himself and the defendant within the meaning of Art III. This is the **threshold question** in every federal case, determining the power of the court to entertain the suit. As an aspect of justiciability, the standing question is whether the plaintiff has "alleged such a personal stake in the outcome of the controversy" as to warrant his invocation of federal court jurisdiction and to justify exercise of the court's remedial powers on his behalf. Baker v Carr, 369 US 186, 204, 7 L Ed 2d 663, 82 S Ct 691 (1962). The Art III judicial power **exists only to redress** or otherwise to **protect against injury** to the complaining party, even though the court's judgment may benefit others collaterally. Warth v. Seldin, 422 US 490, 45 LEd 2d 343, 95 S Ct. 2197. (emphasis added)

In support of the petitioner's position, the United States Court of Appeals for the Fourth Circuit has stated:

> Complaint should not be dismissed merely because court **doubts that plaintiff will ultimately prevail,** so long as plaintiff colorably states facts which, if proven, would entitle him to relief. Fed.Rules Civ. Proc. Rule 12(b)(1,2,6), 28 U.S.C.A. *Adams v. Bain,* 697 F.2d 1213 (1982) (emphasis added)

The facts stated in the petitioner's complaint were sufficient to prevent dismissal for failure to state a claim under past rulings of the Fourth Circuit. It was stated in *Revene v Charles County Commissioners,* 882 F.2d 870 (4th Cir.1989) that:

> Conclusory **allegations that are supported by pleaded facts should survive motion to dismiss** for failure to state claim, even if actual assertions are equally consistent with contrary conclusion. Fed. Rules Civ. Proc. Rule 12(b)(6), 28 U.S.C.A. (emphasis added)

5.

The above facts would appear to place the court's departure from normal judicial proceeding squarely within the confines of the *Rules of the Supreme Court* Rule 1 0 .1 (a) which pertains, in pertinent part, to situations that have *"...departed from the accepted and usual course of judicial proceedings. "* The lower court's failure to consider the facts in the petitioner's case indicate that the ruling of the court was a departure from the *"usual course of judicial proceeding. . "* and that said failure should be considered by this Court.

6.

The District Court's decision as upheld by the Appeals Court stated:

> On June 20, 1990, pursuant to 26 U.S.C. § 6331, the IRS placed a levy upon all of plaintiff's property including his real property located on Bevelheimer Road, Westerville, Ohio.

However, the documents filed for this "levy" were not executed as required by Internal Revenue Code § 6065, and as upheld by this Court as well as the Fourth circuit. Section 6065 required specific performance as shown by the statute:

> Sec. **6065. Verification of returns.**
> Except as otherwise provided by the Secretary, **any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws** or regulations shall contain or be verified by a written declaration that **it is made under the penalties of perjury.** (emphasis added)

The above statute cannot be construed as empty words that convey no meaning. to do otherwise, would indicate that all statutes are subject to strict interpretation and can only be deciphered by courts. The lower courts were hesitant to address this issue, however, as this court has stated in various cases that are cited below, statutes must be applied as they are written by Congress. This should certainly include § 6065 of the Internal Revenue Code. Statutory construction is mandatory, and it is incumbent upon the courts to enforce them. If these statutes were held to be valid, and there is no reason to think otherwise, the petitioner's claim would certainly be upheld. The District Court and the Appeals Court should have addressed all of the issues in the complaint and accepted the wording in the statutes as stated in:

> Where **statute's language is unambiguous, court's task of statutory construction is at** end unless enforcement of statutory language would contravene clearly express legislative intent. *In Re Forfeiture Hearing as to Caplin*. 837 F.2d 637 (4th Cir. *1988)*

This truth was stated even more succinctly in *American Tobacco Co. v. Patterson*, 456 US 63:

> In all cases involving **statutory construction,** a court's starting point must be the language employed by Congress, and it would be assumed that the **legislative purpose** is expressed by the **ordinary meaning** of the words used; thus, absent a **clearly expressed** legislative intention to the contrary, that language must ordinarily be regarded as conclusive. (emphasis added)

and,

> The starting point in any endeavor to construe a statute is always the words of the Statute itself; unless congress has clearly indicated that its intentions are contrary to the words it employed in the statute, this is the ending point of interpretation. Fuller v. United states 615 F. supp. 1054 (D.C. Cal 1985), West's Key 188 quoting Richards v. United states 369 US 1, 9, 82 s. CT. 585, 590, 7 L.Ed. 2d 492 (1962) (emphasis added)

This doctrine is certainly not new. Long ago the United States Supreme Court said:

> The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of the words and the rules of grammar. U.S. v. Goldenberg et al., 168 U.S. 95, 102 (1897). (emphasis added)

7.

Since a part of this case hinges on "statutory construction," failure on the part of the appeals court to follow the *"usual course of judicial proceedings,* would place this case within another element of Rule 1 0 (a), to wit; the Fourth Circuit's ruling *"has rendered a decision in conflict with the decision of another United States court of appeals on the same matter"*. The Sixth Circuit's decision would appear to be in conflict with the decision of the Fourth Circuit in a similar matter, therefore, this court could exercise their discretion to review this case in conformity with Rule 10 (a) of the Rules of the Supreme Court. Likewise, the Sixth Circuit's decision appears to be in conflict with the findings of this Court in *Richards v. United States. U.S. v Goldenberg* and *American Tobacco Co. v. Patterson, supra.*

8.

Dismissal of a complaint under Rule 12 (b) (6), especially for a pro

se litigant should be construed liberally. It is generally agreed and confirmed by this court—the *United States Supreme Court*, in *Pennell v. City of San Jose, 485 US* 1—that a reviewing court, when ruling on a motion to dismiss for failure to state a cause of action, must accept as true all material allegations of the complaint. This court held that:

> Under Article III of the United States Constitution, when standing is challenged on the basis of the pleadings, the United States Supreme Court will (!) accept as true all material allegations of the complaint, and (2) construe the complaint in favor of the complaining party.

Clearly the starting point of litigation must be the reading of the complaint with a presumption that it is indeed factual and based on existing law. A decision to dismiss without thoroughly considering the allegations therein would be improper as well as contrary to accepted judicial procedure.

CONCLUSION

As shown in this petition, the courts including this Court, have confirmed the rights of a litigant under *Federal Rules of Civil Procedure* Rule 12 (b) (6). The courts are in agreement as to the procedure to be followed before the authority of this Rule can be invoked. For whatever reasons, in this particular instance, this procedure was not afforded this petitioner. Likewise, the appeals courts as well as this court are in agreement that a clearly worded statute means exactly what the writers of the law intended and judicial legislation is prohibited. The decision of the Appeals Court for the Sixth Circuit did not conform to this doctrine. Wherefore, the petitioner prays that a writ of certiorari will be granted consistent with Rule 10 .1 (a) of the Rules of the United States Supreme Court.

Respectfully submitted this 9 day of June 1994.

James Anderson

James Anderson, Petitioner, *pro se*
P.O. Box 441
New Albany, OH 43054

EXHIBIT A

No. 93-4157

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES R. ANDERSON,
Plaintiff-Appellant,

-V-

UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE; TIMOTHY R. FARKUS
Defenants-Appelles.

BEFORE: MERRITT, Chief Judge; GUY and BOGGS, Circuit Judges.

James R. Anderson, a pro se Ohio resident, appeals a district court order denying his motion to reinstate his quiet title action pursuant to Fed. R. Civ. P. 60(b)(2). The case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is mot needed. Fed. R. App. P. 34(a).

On April 28, 1992 the district court granted summary judgment for the United States concluding that the Internal Revenue Service has complied with all procedural and administrative collection regulations concerning the sale of Anderson's property. The sale was conducted in order to satisfy Anderson's tax liabilities.

On January 25, 1993, Anderson filed a motion requesting that the district court vacate its previous judgment based on newly discovered evidence pursuant to Fed. R. Civ. P. 60(b)(2). The district court denied the motion noting that the "new evidence" consisted of an affidavit from a paralegal which stated that it was the paralegal's opinion that Anderson did not receive proper notice as to the collection activities of the IRS.

In his timely appeal, Anderson attempts to relitigate the merits of the underlying judgment. He requests oral argument. The appellees have moved the court to remand the *case* back *to* the

district court so *the* district court can enter a corrected judgment.

An order denying relief pursuant to Fed. R. Civ. P. 60(b) is reviewed under the abuse of discretion standard. *See In re Salem Mortgage Co.*, 791 F.2d 456, 459 (6th Cir. 1986). An abuse of discretion exists when the reviewing court has a definite and firm conviction that the trial court committed a clear error of judgment. *Amernational Indus., Inc. v. Action-Tungsram, Inc.*, 925 F.2d 970, 975 (6th Cir.), *cert. denied*, 111 S. Ct. 2857 (1991).

Upon review, we conclude that the district court did not abuse its discretion in denying Anderson's motion. Anderson did not present any new evidence which justified the granting of Rule 60(b)(2) relief. *Davis by Davis v. Jellico Community Hosp., Inc.*, 912 F.2d 129, 135 (6th Cir. 1990). Furthermore, Anderson cannot argue on appeal the merits of the underlying judgment. *See Browder v. Director, Dep't of Corrections*, 434 U.S. 257, 263 n.7 (1978); *Peake v. First Nat'l Bank & Trust Co. of Marquette*, 717 F.2d 1016, 1020 (6th Cir. 1983).

Accordingly, we deny the request for oral argument, deny the motion for remand, and affirm the district court's order. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

_____

Clerk

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMES R. ANDERSON,
Plaintiff,

-V-

Case No. C-2-91-543
JUDGE SMITH

UNITED STATES OF AMERICA,
et al.,
Defenants.

OPINION AND ORDER

This action was commenced by plaintiff, James R. Anderson ('Anderson'), challenging the validity of the collection activities of the Internal Revenue Service ('IRS"). Anderson now seeks reinstitute his action to quiet title to real and personal property which he asserts were improperly levied on and sold at public auction because of the allegedly invalid collection activites of the IRS. This mater is before the Court pursuant to plaintiffs motion to reinstitute an action to quiet title based on new evidence pursuant to Fed. R. Civ. P. 60(b) (2).

I.

On April 28, 1992, the Court granted defendant's motion for summary judgment, concluding that the IRS had complied with all procedural and administrative collection regulations. The factual findings made in the April 28, 1992 Opinion and Order remain relevant to the instant action and are deemed to be fully incorporated herin. A brief summary, however, is helpful for purposes of this discussion.

Plaintiff failed to pay his personal income taxes for the years 1983 through 1986. There is no dispute that plaintiff was in arrears in the amounts of $7,182.96, $11,119.67, $11,705.66, and $3,508.18 respectively. The IRS assessed plaintiff, provided notice of the assessments, and demanded payment. As a result of plaintiff's nonpayment of these tax liabilities, the IRS initiated an administrative collection action against plaintiff including the filing of Notices of Federal Tax Liens.

On June 20, 1990, pursuant to 26 U.S.C. § 6331, the IRS placed a levy upon all of plaintiff's property including his real

property located on Bevelheimer Road, Westerville, Ohio. The Bevelheimer property was then sold on August 3, 1990 at a public auction, in compliance with 26 U. S. C. § 6335, to defendant Timothy R. Farkas ("Farkas") for $7,500. Upon Farkas' payment in full of the $7,500, Farkas received a certificate of sale as specified in 26 U . S . C . § 6338. After the 180 day statutory redemption period had expired, Farkas received a deed to the Bevelheimer property as authorized by 26 U. S . C. § 6338.

In the April 28, 1992 order, this Court stated that "the administrative collection activity against Mr. Anderson including the filing of the Notices of Federal Tax Lien was proper and within the requirements of 26 U. S. C. § 6303 and § 6203. " Therefore, the defendant's motion for summary judgment was granted. Furthermore, in the November 4, 1992 order, the court granted judgment in favor of Farkas on his counterclaim, thereby allowing him to recover the fair rental value of the property in the amount of $3,080 plus an additional $220 per month as long as plaintiff remained on the premises. In addition, the Court denied plaintiff's motion to amend his complaint. Finally, the Court warned plaintiff that the presentation of frivolous, delay-causing claims would not be tolerated and could lead to sanctions. Despite this warning, plaintiff is again before the Court attempting to avoid the impact of the April 28, 1992 decision.

II.

A motion for relief from judgment under Rule 60(b) on the ground of newly discovered evidence is subject to the same standard as a motion made under Rule 59; thus decisions construing either rule are considered authoritative. See 11 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 2859 (1973). Federal Rule of Civil Procedure 60(b)(2) states:

> the court may relieve a party or a party's legal representative for a final judgment, order, or proceeding for the following reasons . . . (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b) . . . . The motion shall be made within a reasonable time, and for reasons (1),(2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.

A party who seeks to invoke Rule 60(b)(2) must establish that: (1) the proffered evidence was in existence at the time of the trial but was not in the moving party's possession until after the judgment was rendered; (2) by due diligence, the evidence could not have been discovered in time to move for a new trial under Rule 59(b); (3) the evidence is not merely cumulative; and (4) the new evidence is of such materiality and weight that it would probably produce a different result. Id.; see also Mumford v. Bowen, 814 F.2d 328, 329-31 (7th Cir. 1986). Furthermore, such a motion is properly denied where the movant has not asserted any of the enumerated grounds upon which a court could grant the requested relief. Sutherland v. Fitzgerald, 291 F.2d 846, 847 (3rd Cir. 1961).

III.

Plaintiff's argument throughout this case has been that he did not receive proper notice or demand for the tax during the tax years 1983 through 1986 as required by 26 U.S.C. § 6303. He asserts that the computer transcripts presented by the IRS do not indicate that he received the proper notice. In support of the instant motion, plaintiff relies on the Declaration of Paul Ripley, a paralegal.

The Court reaffirms its previous ruling that the IRS sent sufficient notice and demand to plaintiff. There are no procedural irregularities in the IRS' collection of plaintiff's tax liabilities from 1983 through 1986. Turning to plaintiff's most recent motion, the evidence presented is not "newly discovered evidence" within the meaning of Rule 60(b)(2).

The only evidence offered by the plaintiff in support of this motion is the Declaration of Paul Ripley, a paralegal who allegedly specializes in Federal Tax Law. Mr. Ripley's Declaration offers an interpretation of the Internal Revenue Code, the Code of Federal Regulations, and various Internal Revenue Manuals which support plaintiff's original claim, that he did not receive proper notice of the IRS' collection activities. The Court is troubled by the proffered evidence for two reasons: (1) the affidavit of a purported paralegal is of no persuasive value and (2) the opinions offered by Mr. Ripley may constitute the unauthorized practice of law without a license.

These difficulties aside, the Declaration cannot be considered new evidence within the meaning of Rule 60(b)(2). Plaintiff makes no attempt at (1) establishing that the proffered evidence could not

have been discovered in time to move for a new trial pursuant to Rule 59(b), (2) proving that the evidence is not merely cumulative, or (3) showing that the evidence is of such materiality and weight that it would probably produce a different outcome. Because plaintiff has not offered any explanation for his delay or his failure to properly review all of the material within his control, his motion must be denied.

Plaintiff is cautioned that future filings will be carefully scrutinized under Fed. R. Civ. P. 11 and that monetary sanctions may be imposed against any party or attorney for filing frivolous papers or actions. The Court declines in this instance to impose sanctions on this pro se litigant but he stands warned that future frivolous papers will result in Rule 11 sanctions.

IV.

For the above reasons, plaintiff's motion to reinstitute the quiet title action based on new evidence (Doc. 35) is **DENIED**.

The Clerk shall remove Doc. 35 from the Court's pending motion list

IT IS SO ORDERED.

GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT

EXHIBIT C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No: 93-4157

Filed: April 4, 1994

JAMES R. ANDERSON
Plaintiff - Appellant

v.

UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE:
TIMOTHY R. FARKUS

Defendants - Appellees

MANDATE

Pursuant to the court's disposition that was filed 3/11/94 the mandated for this case hereby issues toady. (AFFIRMED)

A Truce Copy.

Attest:

_____
Deputy Clerk

No costs taxed

Filing Fee ..... $
Printing ..... $

Total ..... $